

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.141.405 fee schedule, and) AND ADOPTION
ARM 24.141.2102 continuing)
education, and the adoption of)
NEW RULE I licensee responsibilities,)
and NEW RULE II fee abatement)

TO: All Concerned Persons

1. On January 12, 2006, the State Electrical Board (board) published MAR Notice No. 24-141-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 17 of the 2006 Montana Administrative Register, issue no. 1.

2. On February 3, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 13, 2006, deadline.

3. The board has thoroughly considered the comments made. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Several comments were received in opposition to the proposed amendment to ARM 24.141.405 and 24.141.2102 changing the 3-year renewal cycle to a 2-year cycle. The commenters stated that a 2-year renewal would be in contrast to the 3-year national electrical code cycle.

RESPONSE 1: The board acknowledges the commenters' concerns and has determined that a 2-year renewal cycle is more in line with the board's and department's budgetary and appropriation cycles and will be more efficiently administered. The board is amending ARM 24.141.405 and 24.141.2102 exactly as proposed.

COMMENT 2: One commenter suggested that when the board raises licensing fees, the additional money should be used to enforce electrical licensing laws.

RESPONSE 2: The board notes that as an executive branch agency, the board is bound by a budget that must be reviewed and approved by the legislature and a substantial portion of the board's budget is allocated to and used to ensure licensure laws are enforced.

COMMENT 3: A commenter expressed a concern about possible redundancy or inconsistency between the language and purpose of New Rule I and an existing administrative rule, ARM 24.141.403. The commenter suggested that the two either

be merged into one, or that ARM 24.141.403 be repealed.

RESPONSE 3: The board determined that the commenter's concern is well founded and noteworthy. However, the board concluded that merging ARM 24.141.403 with New Rule I or repealing ARM 24.141.403 are changes which are too substantive to be done within the scope of this final rulemaking notice. The board will monitor the interaction between New Rule I and ARM 24.141.403 after New Rule I becomes effective, and will make any adjustments necessary regarding these two rules in a future rulemaking project.

COMMENT 4: One commenter suggested that the language proposed in (1)(b) of New Rule I be changed, for the sake of legal clarity, to read, "being adjudicated under Title 39, Montana Code Annotated, by the court or agency having jurisdiction, as having violated any workers compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade."

RESPONSE 4: The board determined that the suggested language change in (1)(b) adds clarity and an important legal distinction to this subsection of New Rule I and the board is amending the rule accordingly.

COMMENT 5: A commenter suggested that subsection (1)(a) of New Rule I should be clarified with respect to the point at which failure to correct code violations would ripen into unprofessional conduct.

RESPONSE 5: The board concluded that the commenter's concern is well founded and is amending subsection (1)(a) of New Rule I accordingly.

COMMENT 6: One commenter expressed a concern that New Rule I might not achieve the board's desired results due to a perceived lack of clarity in the proposal.

RESPONSE 6: While the board appreciates all comments received as part of the administrative rule process, the board is unable to respond meaningfully to this particular comment as the commenter failed to express any specific reason(s) for the concern. The board deliberated and discussed the problems which New Rule I attempts to resolve for many months prior to developing the proposed rule. Therefore, the board has confidently concluded that adopting New Rule I will move enforcement of electrical licensure laws in a positive direction. The board intends to monitor the effects of this rule on the state's electrical industry and will make appropriate adjustments in the future should they become necessary.

COMMENT 7: A commenter pointed out that the term "Montana State Electrical Code" is not defined in this rule proposal, and also noted that, notwithstanding the proposed new rule, licensed electricians could be subject to disciplinary proceedings under the statutes and administrative rules administered by the Building Codes Bureau (bureau).

RESPONSE 7: The board agrees with the commenter and is amending New Rule I

accordingly by adding the definition of "Montana State Electrical Code" to the rule. The board also acknowledges that licensed electricians are subject to the authority of the bureau, particularly relating to the bureau's permitting authority. The board believes and concludes that identifying uncorrected violations of the bureau's adopted electrical code as a form of unprofessional conduct under Title 37, MCA, will tie it effectively to the board's licensing rules for the purpose of disciplining licensees who perform substandard electrical work. In adopting New Rule I, the board intends to further underscore the importance of compliance with the statutes and administrative rules enforced by both the board and the bureau.

COMMENT 8: A commenter stated that the term "uncorrected violations" in subsection (1)(a) of New Rule I is too broad. The commenter claimed that electrical inspectors would interpret the term inconsistently due to uncertainty as to how much time will be allowed to correct or take issue with perceived violations.

RESPONSE 8: The board determined that the commenter's concern is well founded and is amending subsection (1)(a) of New Rule I accordingly.

COMMENT 9: One commenter expressed a concern that New Rule I "attempts to remove authority [to determine when an electrical license is required] from the State Electrical Board and give it to the Building Codes Division."

RESPONSE 9: The board notes that the language of 37-68-101(3), MCA, that authorizes the electrical board to require licensure of certain people working in the state's electrical industry is repeated verbatim in 50-60-601, MCA, a statute enforced by the bureau. The board believes this duplication of delegated authority by the legislature indicates an intent that the electrical board and the bureau should work together to enforce Montana's electrical licensure statutes. Toward that end, the bureau recently amended one of its administrative rules, ARM 24.301.431(7), to require that all electrical work done under a permit issued by the bureau must be done by people "who are licensed as an electrician or registered as an electrical apprentice." Since the amended rule will enable the bureau to initiate enforcement action(s) against permittees when the bureau's inspectors discover unlicensed personnel performing electrical work, the board believes the prospect of such actions will provide electrical contractors with a meaningful incentive to ensure that all employees who perform work covered by the state electrical code are properly licensed. Additionally, since ARM 24.301.431(7) is a provision of the state electrical code, violations of that provision would potentially be reportable to the board by bureau inspectors as unprofessional conduct by the licensee/permittee who allowed it. Thus, based upon the plain language of both underlying statutes and the recent revision of ARM 24.301.431(7), the board concludes that adopting (1)(a) of New Rule I will compliment both the bureau's and the board's efforts to protect the public's health, safety, and well-being, and will also enhance the board's ability to enforce licensing statutes and administrative rules.

4. The board has amended ARM 24.141.405 and 24.141.2102 exactly as proposed.

5. The board has adopted NEW RULE II (24.141.408) exactly as proposed.

6. The board has adopted NEW RULE I (ARM 24.141.2301) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.141.2301) UNPROFESSIONAL CONDUCT (1) remains as proposed.

(a) ~~uncorrected~~ failing to correct violations of the Montana State Electrical Code as adopted by the Department of Labor and Industry's Building Codes Bureau, after having received proper notice and adequate time to do so, as determined by the inspector involved in light of the seriousness of the violation(s) and other similarly relevant considerations;

(b) ~~failing to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance, and independent contracting being adjudicated under Title 39, MCA, by the court or agency having jurisdiction, as having violated any workers' compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade;~~ and

(c) and (2) remain as proposed.

(3) For purposes of this rule, the term "Montana State Electrical Code" is defined as the edition of the National Electrical Code or any other model electrical code which is adopted and/or as it may be modified by the Department of Labor and Industry's Building Codes Bureau for use as a construction standard in and by Montana's electrical industry.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-68-201, MCA

IMP: 37-1-307, 37-1-316, 50-60-601, 50-60-603, 50-60-604, MCA

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 8, 2006